# STATE OF MICHIGAN

# COURT OF APPEALS

ROGER FRICK,

Plaintiff-Appellant,

v

LISA FRICK, a/k/a LISA HOFFMAN,

Defendant-Appellee.

UNPUBLISHED
April 23, 2002

No. 221381
Genesee Circuit Court
LC No. 98-200266-DO

Before: Cooper, P.J., and Griffin and Saad, JJ.

PER CURIAM.

Plaintiff appeals by leave granted[1] from a divorce judgment, challenging the sufficiency of trial court's findings and its determination that certain commercial real property, referred to as the Waterford property, is defendant's separate property. We affirm.

Plaintiff contends that this Court should vacate the divorce judgment because it is based on findings of fact and conclusions of law that have no support in the trial record. We disagree.

"In actions to be tried on the facts without a jury . . . the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment." MCR 2.517(A)(1). Generally, findings are sufficient when it is clear that the trial court was aware of the factual issues and correctly applied the law. *Lafond v Rumler*, 226 Mich App 447, 458; 574 NW2d 40 (1997). In divorce actions, findings are sufficiently specific if the parties are able to determine the approximate values of their individual awards by consulting the verdict along with the valuations to which they stipulated. *Nalevayko v Nalevayko*, 198 Mich App 163, 164; 497 NW2d 533 (1993). Ordinarily, this court will not remand for an explanation or clarification of the trial court's findings unless it will aid appellate review. See *People v Shields*, 200 Mich App 554, 559-560; 504 NW2d 711 (1993).

Plaintiff argues, implausibly, that no evidence supported the trial court's conclusion that there was a breakdown in the marriage relationship to the extent that the objects of matrimony

[1] Plaintiff initially filed an appeal as of right. However, this Court determined that, because certain issues relating to the parties' personal property remained unresolved, the judgment was not a final order. Therefore, this Court treated the claim of appeal as an application for leave to file, and leave was granted.

had been destroyed. "If either party in a marriage is unwilling to live together, then the objects of matrimony have been destroyed." *Grotelueschen v Grotelueschen*, 113 Mich App 395, 398-399; 318 NW2d 227 (1982). Here, the parties separated when defendant discovered plaintiff's long-term affair with another woman. Further, there is no indication in the record that either party wants to reconcile. Moreover, at the hearing of plaintiff's motion for entry of judgment, plaintiff's attorney repeatedly asked the court to enter a judgment of divorce, which he prepared, and which contained the finding he now disputes. Indeed, it was plaintiff who filed this action for divorce. Accordingly, there is no merit to plaintiff's claim that the trial court should not have entered a judgment of divorce based on a breakdown in the marriage relationship.

Regarding plaintiff's argument that the trial court's other findings were insufficient, the record reflects that the parties can determine the approximate values of their individual awards by consulting the verdict along with the valuations to which they stipulated. Therefore, plaintiff is incorrect in his assertion that the court's findings were inadequate. See *Nalevayko*, *supra*, 198 Mich App at 164. Further, because the court's findings were based on the evidence and representations made to the court by both parties, the court's findings are clearly supported by the record.

We also reject plaintiff's contention that the record is inadequate because of a lack of sworn testimony. When defendant *in pro per* told the court how the proceeds from various transactions were spent, plaintiff's counsel objected and argued that she should testify to that information. The court disagreed and stated that it was merely attempting to determine the property in dispute and what each party claimed they should be awarded. Later, however, plaintiff's counsel told the court that a protracted trial could be avoided if the court allowed the parties to simply brief the issues regarding whether certain property was part of the marital estate. The court asked the parties to do so, and to submit proposed divisions of the disputed property. Accordingly, if any error occurred, plaintiff certainly contributed to it and cannot be heard to complain on appeal that this constituted reversible error. *Farm Credit Services v Weldon*, 232 Mich App 662, 684; 591 NW2d 438 (1998).[2]

Plaintiff also raises several claims regarding the trial court's findings of fact and dispositional ruling regarding the Waterford property.

At the outset, we note that plaintiff is incorrect that Michigan does not recognize the concept of separate property. To the contrary, the "distinction between marital and separate estates has long been recognized in this state." *Reeves v Reeves*, 226 Mich App 490, 494; 575 NW2d 1 (1997). As this Court observed in *Reeves*, *supra* at 493-494, a "trial court's first

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[2] Moreover, while plaintiff's counsel asserted that defendant should be cross-examined concerning the money she inherited from her mother, the trial court indicated that defendant would not be given credit for that inheritance in the division of the marital estate, and she was not. Thus, even if there should have been more evidence taken concerning the inheritance, defendant was not given credit for that money and, therefore, any alleged error is harmless. Furthermore, though plaintiff's counsel was aware that a dispute remained concerning some of the parties' other personal property, he repeatedly asked the court to enter the judgment of divorce. Again, because plaintiff contributed to this alleged error by plan or negligence, he may not raise it on appeal. *Farm Credit Services*, *supra*, 232 Mich App at 684.

consideration when dividing property in divorce proceedings is the determination of marital and separate assets." Our Supreme Court has similarly recognized that, generally, only the marital estate may be divided in a divorce. See *Dart v Dart*, 460 Mich 573, 585 n 6; 597 NW2d 82 (1999); see also *McDougal v McDougal*, 451 Mich 80, 89-92; 545 NW2d 357 (1996). This principle is also reinforced in MCL 552.23 and MCL 552.401, which sets forth exceptions to the general rule that a spouse's separate property is not subject to division in a divorce. Thus, plaintiff's suggestion that Michigan does not recognize a spouse's separate property is wrong.

We also hold that the trial court properly awarded the Waterford property to defendant as her separate asset. As our Supreme Court stated in *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993):

> In deciding a divorce action, the circuit court must make findings of fact and dispositional rulings. On appeal, the factual findings are to be upheld unless they are clearly erroneous. *Beason v Beason*, 435 Mich 791, 460 NW2d 207 (1990). A dispositional ruling, however, "should be affirmed unless the appellate court is left with the firm conviction that [it] was inequitable." *Sparks v Sparks*, 440 Mich 141, 152; 485 NW2d 893 (1992).

In a divorce action, the division of property is not governed by strict mathematical formulations. Rather, a court must determine whether the division is equitable in light of all the facts. *Sparks, supra* at 158-159. "[T]he following factors are to be considered wherever they are relevant to the circumstances of the particular case: (1) duration of the marriage, (2) contributions of the parties to the marital estate, (3) age of the parties, (4) health of the parties, (5) life status of the parties, (6) necessities and circumstances of the parties, (7) earning abilities of the parties, (8) past relations and conduct of the parties, and (9) general principles of equity." *Id.* at 159-160. The trial court "shall make specific findings of fact regarding [all relevant] factors," but may not assign disproportionate weight to any one circumstance. *Id.* at 158-160, 162-163.

A court may divide all property that comes to either party by reason of the marriage. MCL 552.19. "Generally, the marital estate is divided between the parties, and each party takes away from the marriage that party's own separate estate with no invasion by the other party." *Reeves, supra* at 494. Assets earned by a spouse during the marriage are properly considered part of the marital estate, even if not received until later. *Byington v Byington*, 224 Mich App 103, 110, 112; 568 NW2d 141 (1997). A "court must strive for an equitable division of increases in marital assets 'that may have occurred between the *beginning* and the end of the marriage." *Reeves, supra* at 493, quoting *Bone v Bone*, 148 Mich App 834, 838; 385 NW2d 706 (1986) (emphasis added by *Reeves*); see also *Byington, supra* at 113.

Here, the trial court correctly found that plaintiff did not contribute financially to the marital estate. The court properly declined to include any portion of the value of the Waterford property as part of the marital estate, because plaintiff was adequately compensated during the marriage for whatever minimal contribution he may have made.

The record indicates that defendant owned a bridal shop on the Waterford property for two to four years before the marriage and that she bought the property before the marriage for $85,000, using her own money to make the $22,000 down payment. Defendant also represented

that, during the four years that she rented the property before purchasing it, she made $50,000 worth of improvements because the buildings were in extremely poor condition (so the improvements were necessary for the success of her bridal shop business), and because she had a firm arrangement with her landlord to exercise her option to buy. The record reflects that plaintiff performed minor maintenance on the buildings during the marriage, but that defendant paid contractors to do most of the work. Defendant further indicated that the person who leased the buildings maintained them during the seven years before the divorce. Monthly payments on the property were $800, and came from the income generated by the bridal shop and tuxedo shop. The property was paid off sometime in 1985 and was valued at approximately $225,000 at the time of the divorce.

We hold that the trial court did not clearly err in its findings of fact regarding defendant's lack of contribution to the disputed property or to the entire marital estate and did not err in determining that the disputed property is defendant's separate asset. It is clear from the record that, aside from plaintiff's incidental contribution of working on the property for a short time, the property increased in value because of defendant's contributions and improvements and that, for many years, his interest in the property was wholly passive. Defendant owned the property before the marriage and she alone contributed to its acquisition and improvement. In fact, as the trial court correctly found, plaintiff contributed virtually nothing financially to the marriage.

In light of all the circumstances, we also find that the trial court's dispositional ruling regarding the assets in this case was clearly fair and equitable. In light of the parties' ages, health, plaintiff's extramarital affair over many years of the marriage and plaintiff's failure, over nineteen years, to contribute financially to the union, the trial court's award to plaintiff of 45.76% of the marital estate was not inequitable.[3] Because the trial court's findings were supported by the record and dispositional ruling was clearly equitable, we affirm the trial court's award.

Affirmed.

/s/ Jessica R. Cooper
/s/ Richard Allen Griffin
/s/ Henry William Saad

[3] Considering only the combined value of the two homes, plaintiff was awarded 40.74% of the marital estate. However, the $17,500 awarded to plaintiff is exactly half of the $35,000 difference in the value of the two homes ($112,000 - $77,000 = $35,000). Thus, plaintiff was awarded 45.76% of the total amount of $206,500.